

APPEAL NO. 041409
FILED JULY 22, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 3, 2004. The hearing officer determined that the employee's (decedent) death was not a result of the compensable injury sustained on _____; and that the appellant (claimant beneficiary) is a proper legal beneficiary of the decedent. The claimant beneficiary appealed the hearing officer's injury determination based on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance. The hearing officer's proper legal beneficiary determination has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed.

It was undisputed that the decedent sustained a compensable closed head injury when he was assaulted in the course and scope of his employment on _____, and that he died on (date of death), due to respiratory failure. The death certificate in evidence reflects that the decedent's cause of death was respiratory failure, pneumonia, and hypoxemia. The claimant beneficiary had the burden to prove that the decedent's death was a result of the compensable injury. There was conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As the trier of fact, the hearing officer may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. In the instant case the hearing officer was persuaded by the testimony of Dr. H, the peer review doctor, that the decedent's death was not the direct and natural result of his compensable injury. An appellate-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950084, *supra*. Under our standard of review, we conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701-2554.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge